THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 13278 of 1995

DATED: 5-12-2006

Between:

The General Manager,
M/s Singareni Collieries Co. Ltd.,
Karimnagar District.

…petitioner

and

The Presiding Officer,
Industrial Tribunal,
Hyderabad-II, Hyderabad and another

…Respondents.

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.13278 of 1995.

Oral order:

This writ petition by the Singareni Collieries Company Limited is directed against the award of the Industrial Tribunal, Hyderabad-II, dated 21-4-1994 passing an award in I.D.No. 7 of 1994 in favour of one K.U.Verghese declaring that the said workman is entitled to be considered as having been appointed to the post of Welder Grade-I (Group-B) with effect from the date of his appointment in the company i.e., with effect from 28-8-1984 and for grant of all consequential reliefs from the said date.

Verghese, after obtaining the qualification of SSLC and ITI in Welding, initially worked as Welder at Heavy Vehicles Factory, Ministry of Defence, Avadi, Madras in 1972 and thereafter proceeded to Algeria whereat he worked as Pipe Welder and later as a Welder in Singapore. He then worked for some time in Ambattur. During 1983-84 while working as Welding Supervisor at AIGC Ltd., Madras he responded to the notification issued by the petitioner's company which had advertised for the post of Welder Grade-I in the Opencast Mines at Godavarikhani. He appeared at the interview and was appointed by an order dated 29-7-1984, which to the extent relevant and material reads as under:

"Reference to the Interview held on 21-2-1984, you are hereby appointed as Welder on a commencing basic pay of Rs.30,14 per day in the excavation Grade of Rs.30.14-1.55-51.84 plus other allowances as per Company's Rules subject to medical fitness and verification of

antecedents."

Though the pay scale was mentioned in the order of appointment, the petitioner presumed that as he had applied for the advertised post of Welder Grade-I, the pay scales pertains to the said post. Even in proceedings dated 20-8-1984 and 23-8-1984 Verghese was referred to as a Welder without mentioning either Group-I or Group-II. However, while confirming his service by proceedings dated 15-1-1985 he was designated as Welder Group-C instead of Group-B. In the circumstances, he represented through the Union and the Government of India by an order of reference dated 16-2-1994 referred the dispute for adjudication to the Industrial Tribunal. The dispute referred is whether the action of the petitioner-Management in denying to offer the appropriate Grade to Verghese as Welder Grade-I was legal and to what relief he was entitled to.

The petitioner presumably management choose not to contest the proceedings before the Tribunal. It remained exparte. It even failed to file a counter/written statement to the claim. It also did not impeach the order of reference passed by the Union of India referring the matter to the Industrial Tribunal.

On the basis of the oral testimony of Verghese as WW-1 and the documentary evidence marshaled on his behalf being Exs.W1 to W26, the Industrial Tribunal came to the conclusion that the workman had applied for the post of Welder Grade-I; he was interviewed and selected for the said post; he came to the company leaving his past service for the betterment of his career, the respondent ought to have intimated the concerned workman after test and interview that he was qualified only for the Welder Grade-II post; whether he was willing to join as Welder Grade-II; and the order of appointment ought to have specified that the workman was appointed only as Welder Grade-II and

not Welder Grade-I (the post to which he had applied and was interviewed). The Industrial Tribunal also recorded a clear and categorical finding that there was no evidence before it to justify the presumption that the workman accepted the post offered by the petitioner-company. The Industrial Tribunal recorded that since the workman had applied, was interviewed and selected for Welder Grade-I he could not be appointed as Welder Grade-II. Accordingly an award was passed granting the relief of declaration that the concerned workman was entitled to be appointed as Welder Grade-I with effect from 28-8-1984 with incidental and consequential benefits.

Smt Uma, learned counsel appearing for the writ petitioner contends that the reference is hopelessly barred by laches and delay, as the workman was aware by the confirmation orders of 1985 that he was designated as Welder Group-C instead of Group-D, but nevertheless the reference was made only in 1994. This contention does not commend acceptance by this Court. There is nothing on record to justify the presumption or even an inference that there was any laches or delay on the part of the workman. Having regard to the scheme of the Industrial Disputes Act, a workman who is aggrieved can only recourse or seek relief from the appropriate Government through aegis of the Union. There is nothing on record which justifies a conclusion that the workman did not agitate before the concerned Union for his right shortly after the order dated
15-1-1985 (confirmation order, wherein the workman is stated to have been shown as Welder Grade-II). The process of the Central Government considering the representation of a workman for making a reference to the Industrial Tribunal is also a laborious and time consuming process. In the capacious bureaucracy of the Union, the processing of references of disputes raised by Unions which are multitudinous is not expeditious. The mere fact that a reference was

made in 1994 does not conclusively justify the presumption that there was a delay or laches on the part of the workman concerned or even the Union concerned in seeking a reference by petitioning the appropriate Government. All these are intrinsic questions of fact and the burden is on the Management to impeach the reference as barred by laches and delay to establish that there was indeed laches and delay; no laches or delay on the part of the Union, the statutory authority empowered to make a referencewould disentitle relief to the affected workman. The callous and negligent attitude of the Singareni Collieries in failing to project its defence before the Industrial Tribunal contributed, if at all, to its current plight of suffering the award which is impeached in this writ petition. It has failed to marshal any relevant material either on the merits of the claim which was referred as a dispute or on the question as to whether the reference was fatal. Strategic errors of litigation are not correctable in judicial review. The petitioner-Singareni Collieries has not demonstrated before this Court that it was in financial distress or administrative incapacity during the currency of I.D.No. 7 of 1994 and was therefore, unable to marshal the necessary levels of defences before the Industrial Tribunal.

For the aforesaid reasons, this Court finds no merit in the writ petition. The writ petition is accordingly dismissed. There shall be no order as to costs.

GODA RAGHURAM, J

5th December, 2006.
GRR